

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

EMMA L. TRAVIS, *et al.*,)
)
Plaintiffs,)
)
v.) Case No. 1:08-cv-10
)
JAGUAR CARS,) Judge Mattice
)
Defendant.)
)

MEMORANDUM AND ORDER

Before the Court is Plaintiffs' Motion to Alter or Amend Judgment [Court Doc. 9] pursuant to Rule 59 of the Federal Rules of Civil Procedure. The Court finds that Plaintiffs have shown good cause as to why they failed to prosecute their claims against the Defendant. Accordingly, the Court **GRANTS** Plaintiffs' Motion to Alter or Amendment Judgment. Plaintiff must effect service of process of its Amended Complaint by November 21, 2008.

As the Court noted in its Order dismissing Plaintiffs' claims for failure to prosecute, Plaintiffs' Amended Complaint dropped all of the claims in the first complaint and asserts a single claim that fails to state a cause of action for which relief may be given. See Fed. R. Civ. P. 12(b)(6). Plaintiffs are on notice that the Court will dismiss Plaintiffs' Amended Complaint pursuant to Rule 12(b)(6) *sua sponte*. See *Tingler v. Marshall*, 716 F.2d 1109, 1112 (6th Cir. 1983) (superseded on other grounds by the Prison Litigation Act, 28 U.S.C. § 1915(e)(2)(B)); see also *Andreano v. City of Westlake*, 136 Fed. App'x 865, 873 (6th. Cir. 2005).

Plaintiff is **ORDERED** to **SHOW CAUSE**, in writing, no later than **October 31, 2008**, why the Amended Complaint should not be dismissed with prejudice for failure to state a claim upon which relief can be granted.¹ Defendant may respond to any such showing which may be filed by Plaintiffs, but must do so no later than **November 7, 2009**.

SO ORDERED this 28th day of October, 2008.

/s/Harry S. Mattice, Jr.

HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE

¹

Plaintiff may do so by amending the Amended Complaint pursuant to Federal Rule of Civil Procedure 15 to include specific facts that would support a valid cause of action against the Defendant.